

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSEPH LUNDINE,

Plaintiff,

v.

MARZOCCHI USA, INC., a foreign  
corporation, and MARZOCCHI S.P.A., an  
alien corporation,

Defendants.

Case No. C05-5421 RBL

ORDER DENYING DEFENDANTS'  
MOTION TO EXCLUDE EXPERT  
WITNESS DUSTIN ASTROM

I. INTRODUCTION

This matter comes before the Court on Defendants' motion to exclude Plaintiff expert witness Dustin Astrom pursuant to Federal Rule of Evidence 702. (Dkt. No. 35). Having reviewed the parties' submissions, the Court hereby DENIES Defendants' motion. The reasons for the Court's order are set forth below.

II. DISCUSSION

In *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), the Supreme Court charged trial judges with the responsibility of acting as gatekeepers to prevent unreliable expert testimony from reaching the jury. The gatekeeping function is flexible and applies to all expert testimony, not just testimony based on science. *See Kuhmo Tire Co., Ltd. v. Carmichael*, 526 U.S.

1 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999); *see also Living Designs, Inc. v. E. I. Dupont de Nemours*  
2 *and Co.*, 431 F.3d 353, 369 (9th Cir. 2005) (noting that the inquiry envisioned by Rule 702 is a flexible one  
3 that must be tied to the facts of each particular case). Accordingly, expert testimony is admissible if it will  
4 “assist the trier of fact to understand the evidence or to determine a fact in issue,” if the witness is  
5 “qualified as an expert by knowledge, skill, experience, training, or education,” and if the proposed  
6 testimony is sufficiently reliable. Fed. R. Ev. 702; *Daubert*, 509 U.S. at 590. Mr. Astrom’s proposed  
7 testimony satisfies these requirements.  
8

### 9 **1. The Proposed Testimony is Relevant**

10 Mr. Astrom opines, among other things, that: 1) a suspension fork’s primary function is to cushion  
11 impacts when landing jumps; 2) the jump involved in Mr. Lundine’s fall did not constitute an extreme  
12 maneuver that would exceed a safely designed and manufactured bicycle fork’s capacities; 3) ordinary  
13 users would not contemplate that the Marzocchi ZI QR20 would collapse from a simple stairway jump; 4)  
14 Mr. Lundine is sufficiently skilled to handle the jump in question; and 5) Mr. Lundine did not misuse either  
15 his bicycle or the Marzocchi fork prior to the incident. This testimony is relevant to the case’s central  
16 issues. Moreover, because fork strength, jump difficulty, and rider ability generally are beyond the average  
17 juror’s experience, expert testimony will assist the jury in understanding the evidence and determining facts  
18 in issue.  
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### 21 **2. Mr. Astrom is Qualified**

22 Mr. Astrom has more than ten years of experience in the mountain bike industry. He worked as a  
23 bike mechanic for several years, installing over 1,000 bicycle forks and examining thousands of bicycle  
24 parts. He also worked as a frame builder, hand building over 2,500 bicycles. Mr. Astrom is an avid cyclist  
25 and regularly attends mountain biking trade shows. He has served as a team mechanic for several  
26 professional bicycle racers and is familiar with all types of mountain biking terrain, including stairway  
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28

1 jumps. Mr. Arstrom also has first knowledge about Mr. Lundine's mountain bike riding and maintenance  
2 abilities. Mr. Astrom is qualified to opine on the mountain bike issues in this case.

### 3 **3. Mr. Astrom's Testimony is Sufficiently Reliable**

4  
5 Expert testimony is sufficiently reliable for admission "if 1) the testimony is based upon sufficient  
6 facts or data, 2) the testimony is the product of reliable principles or methods, and 3) the witness has  
7 applied the principles and methods reliably to the facts of the case." Fed. R. Ev. 702. The Court will  
8 address each requirement.

9  
10 First, Mr. Astrom's opinions are based on sufficient facts or data. It is true Defendants argue that  
11 Mr. Astrom has no useful knowledge of the history of Mr. Lundine's Marzocchi fork and does not  
12 demonstrate sufficient knowledge about the specific events or the accident site. For example, Defendants  
13 contend that Mr. Astrom never physically examined the suspension fork or the accident site. Defendants  
14 also contend that Mr. Astrom never obtained critical facts such as Mr. Lundine's speed, angle of approach,  
15 and angles of take off and landing. Mr. Astrom, however, reviewed photographs of the Marzocchi fork,  
16 stairs, and landing areas involved in the incident. He has also owned the Marzocchi fork in question, spoke  
17 with Mr. Lundine about the incident, and is familiar with Mr. Lundine's skill as a mountain bike technician  
18 and rider. Even though Defendants challenge Mr. Astrom's opinions and their accuracy, this is a matter  
19 for cross-examination and jury argument. It does not demonstrate that Mr. Astrom's testimony is based on  
20 insufficient facts or data for purposes of Rule 702.  
21

22  
23 Second, Mr. Astrom's testimony is the product of reliable principles and methods. Mountain bike  
24 jumping is not entirely a scientific process subject to mathematical measurements or laboratory analyses.  
25 Mr. Astrom's opinions, like those of Defendants' expert<sup>1</sup>, are based on years of experience and training.  
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27  
28 <sup>1</sup> Defendants curiously move to exclude Plaintiff's expert even though their own expert, Rolf Kalchhauser, possesses similar qualifications. Indeed, Mr. Kalchhauser bases his opinions solely on Mr. Lundine's deposition and, like Mr. Astrom, never examined the site or the Marzocchi fork in question.

1 Mr. Astrom does not claim to have applied scientific formulas or testing methods. His testimony is based  
2 on analyzing the facts he considers relevant in light of his experience and training. As the Ninth Circuit  
3 notes, “[t]he *Daubert* factors (peer review, publication, potential error rate, etc.) simply are not applicable  
4 to this kind of testimony, whose reliability depends heavily on the knowledge and experience of the expert,  
5 rather than the methodology or theory behind it.” *United States v. Hankey*, 203 F.3d 1160, 1169 (9th Cir.  
6 2000). Mr. Astrom is no more or less qualified than Defendants’ mountain bike expert. He has reviewed  
7 the relevant facts and data, and the application of his expertise to these facts and data is a sufficiently  
8 reliable to meet the Rule 702’s threshold requirements.  
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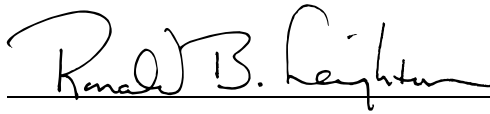
10  
11 Finally, Mr. Astrom applied his experience reliably to the facts at hand. Mr. Astrom’s opinions are  
12 based on his extended experience working with mountain bike components such as Marzocchi forks and  
13 his knowledge of mountain bike jumps generally and Mr. Lundine’s abilities in particular.

14 Defendants’ concern with Mr. Astrom’s opinions are more properly addressed by vigorous cross-  
15 examination and jury argument than by excluding his testimony altogether. *See Dorn v. Burlington N.*  
16 *Sante Fe R.R. Co.*, 397 F.3d 1183, 1196 (9th Cir. 2005) (“The Supreme Court in *Daubert* [] was not  
17 overly concerned about the prospect that some dubious scientific theories may pass the gatekeeper and  
18 reach the jury under the liberal standard of admissibility set forth in that opinion; indeed, the Court said,  
19 ‘Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of  
20 proof are the traditional and appropriate means of attacking shaky but admissible evidence.’” (quoting  
21 *Daubert*, 509 U.S. at 596)); *S.M. v. J.K.*, 262 F.3d 914, 921 (9th Cir. 2001) (“A court may admit  
22 somewhat questionable testimony if it falls within the range where experts might reasonably differ, and  
23 where the jury must decide among conflicting views.” (internal quotation and citation omitted)), as  
24 amended by 315 F.3d 1058 (9th Cir. 2003).  
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III. CONCLUSION

The Court concludes that Mr. Astrom's opinions are sufficiently reliable and relevant to be admitted into evidence and considered by the jury. Defendants will have a full opportunity at trial to explore and rebut his opinions. Accordingly, Defendants' motion to exclude Plaintiff expert witness Dustin Astrom (Dkt. No. 35) is DENIED.

DATED this 9<sup>th</sup> day of November, 2006.

A handwritten signature in black ink, reading "Ronald B. Leighton". The signature is written in a cursive, flowing style. The first name "Ronald" is written with a large, stylized 'R'. The middle initial "B." is written with a large, stylized 'B'. The last name "Leighton" is written with a large, stylized 'L' and a long, sweeping tail that extends to the right.

RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE